

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION III

CA 06-1443

June 13, 2007

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| CHARLIE BROWN | | APPEAL FROM THE ARKANSAS |
| | APPELLANT | WORKERS' COMPENSATION |
| V. | | COMMISSION [F409891] |
| GATES CORPORATION & GALLAGHER BASSETT SERVICES | | |
| | APPELLEES | AFFIRMED |

This is a workers' compensation case in which appellant, Charlie Brown, claimed to have suffered compensable injuries when he slipped on a catwalk at work on August 25, 2004. The ALJ concluded that appellant failed to prove that he sustained compensable lower-back and neck injuries, and the Commission affirmed and adopted the ALJ's opinion. Appellant appeals, contending: 1) that there is not substantial evidence to support the Commission's finding that he did not suffer compensable injuries to his lower back and neck, and 2) that he is entitled to temporary-total disability benefits and medical treatment in connection with his compensable injuries. We affirm.

At the hearing before the ALJ, appellant testified that on August 25, 2004, he slipped on some oil on the catwalk, fell on his "rear end," and hurt his back. He stated

that Judd Hayes was in the area but that he did not think Hayes saw him fall. An accident report was completed and signed by appellant and by his supervisor, Larry Gregory. Appellant stated that he felt an immediate sharp pain in his lower back when he fell, but that he continued to work until about 5 or 5:30 p.m., when he went to see a doctor. He stated that he was first seen by Dr. Bailey, who gave him pain medications and muscle relaxers and scheduled an MRI.

Appellant stated that he was also seen by Dr. Foster for his lower-back problems, which were getting worse. He stated that he continued to work but on light duty. He said that he began missing time from work or having to leave early because of the pain caused by standing. He was taken off work in November 2004. He explained that he had back surgery in February 2005, a second surgery on his back in 2005, and surgery on his neck on November 2, 2005. He said that he has not worked anywhere since November 1, 2004.

Appellant testified that he did not recall going to the doctor in 2002 for back pain. He stated that prior to the accident at work, his back had never before kept him from working. He described the pain in his lower back and left leg as excruciating and constant. He said that he was currently taking Oxycontin and a sleeping pill; that he was previously taking 30 mg of morphine every six to eight hours daily. He stated that he associated the fall at work with the symptoms that he was having in his back and neck because he was not having any of those symptoms prior to the fall at work.

On cross-examination, appellant stated that he had been turned down for social-security disability benefits. He acknowledged that the accident happened around 1:00 or 1:30 p.m. and that he went back to work until 5:30 p.m. He did not recall working twelve hours the next day. He denied hurting his back noodling, which involves catching fish with your hands.

In deposition testimony, Danny Martin explained that he was the area manager for Gates Corporation, one of the appellees; that he held that position on August 25, 2004; that he took a call for Larry Gregory on August 30, 2004; that it was appellant calling to say that he would be missing work because he was hurting; that Martin asked him if it was due to the occurrence at work the week before; and that appellant stated, no, that he did not believe that it was due to that incident but that he was hurting. Martin also testified that he had reviewed the records and that appellant worked twelve hours on August 26.

Bill Medley testified by deposition that he was the health-safety contractor for appellee Gates Corporation, and that he had held the position for twelve years. He explained that appellee prepared an incident report even if an accident did not result in a personal injury. He stated that if an incident resulted in an injury, a first responder should check the person out; that if the injured party wants to go to the doctor, then Medley is notified, he makes arrangements, and all doctor appointments are supposed to go through him. Medley stated that he had no prior knowledge of appellant seeing a physician between August 25 and August 30; that he discovered it when the HR manager told him that the doctor's office had called and needed approval for an MRI. Medley said that he

called the doctor's office and later received a call from appellant stating that he believed his fall at work resulted in an injury; that he needed to see a doctor; and that the doctor had ordered an MRI. Medley stated that Dr. Bailey came to the plant twice a month; that an employee could see Dr. Bailey for any reason; that Dr. Bailey would discuss work-related injuries with him; that Dr. Bailey would not discuss personal injuries or personal illness situations; that he made an appointment to see Dr. Bailey about appellant; and that she said she could not speak to him because appellant's medical situation was not work related. Medley stated that he saw appellant the next day but could not recall if he appeared injured. Medley testified that he filed a first report of injury with the third-party administrator.

On cross-examination, Medley explained that it was normal for him to meet with doctors when he needed information regarding a work incident; that the only thing Dr. Bailey said to him was that she could not speak to him concerning appellant's injuries; and that she would not tell him anything other than she could not speak to him concerning the appellant's case.

In determining the sufficiency of the evidence to support decisions of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, ____ S.W.3d ____ (2006). We will not reverse the Commission's decision unless we are convinced that

fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.* Where, as here, the Commission has denied a claim because of the claimant's failure to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Id.*

For his first point, appellant contends that the Commission's opinion does not display a substantial basis for the denial of relief. We disagree.

Appellees acknowledge that appellant has demonstrated he has a herniation of the disc at the L4-5 region, supported by measurable and objective findings. Appellant states that the real issue in this case involves causation. He contends that the incident report from the date of his fall, the signed medical note showing that he sought medical treatment on the day of the fall, and the MRI taken six days later showing a herniated disc in his lower back all prove that he sustained a compensable injury to his lower back and neck.

The ALJ recounted the testimony that was provided at the hearing and then set out in detail appellant's medical history. The ALJ concluded from her review of the record that appellant failed to prove that he had suffered a compensable injury:

There is no question that there is an accident report filled out and signed by the claimant as well as his facilitator, Larry Gregory, dated August 25, 2004. The claimant in his testimony stated that his back pain at the time of his fall was extreme *but he did not ask to be seen by a doctor nor is there any medical record indicating that he was seen by a physician that day. The testimony sets forth that the claimant worked his twelve hour shift the next day and although he reported that his back was a little sore, he was fine.* Both of the respondents' witnesses testified that they were aware of an incident

report involving the claimant dated August 25, 2004. Dannie Martin testified that when he spoke with the claimant on Monday, August the 30th, *he asked the claimant if his reason for missing work was due to the earlier fall and that the claimant had indicated that he did not think so.* Mr. Bill Medley testified that when he investigated the claimant's slip and fall incident, *Dr. Bailey would not discuss the claimant's case since it was her information it was not work related.* Even if it were found that the claimant's low back problems resulted from his slip and fall on August 25, 2004, I would not find that his cervical neck problems were also related to this fall. *The medical reports do not set forth that the claimant made any complaints as to his neck until after an MRI of his cervical spine was made in late 2005, at least a year after the claimant's slip and fall incident. The claimant's responses to questions particularly on cross examination were evasive or non responsive claiming lack of memory due to medications. The claimant however appeared alert and understanding of the questions asked of him. This claim should therefore be denied in its entirety.*

(Emphasis added.)

In 2002, appellant was diagnosed with degenerative joint problems. In October 2002, he was seen for complaints of back pain that lasted about two weeks. Medical notes indicated that the October 2002 incident was not the first episode of back pain because it was stated that manipulation had helped previously. Appellant was diagnosed with sacroilitic dysfunction and prescribed osteo-manipulative therapy. He returned in mid-December 2002, again complaining of back pain, along with left hip, leg, and knee pain. Medical notes showed that he was suffering from paraspinal spasms, sacroiliac joint tension, and left lumbar upslip. In August 2003, appellant began receiving intramuscular injections in his left hip for severe migraine pain. He was also given several prescriptions for pain medications in 2004, before and after the August 25 incident. Medical records dated October 2004 refer to appellant's lower back pain specifically but also reflect that there is "No specific injury" or "No recent injury."

Of importance, the fact that an incident report was prepared does not conclusively prove that an injury actually occurred, just that the employee reported a fall. There was no witness to the actual fall, and the one employee, Judd Hayes, who supposedly saw appellant getting up from the floor was not called to testify. Further, the August 25, 2004 note in the medical records does not reference back pain, and appears to be just another in a long list of notations regarding pain medications. Still further, even though the MRI that was taken just six days later shows a herniation, it is conclusive proof only of an injury, not that the injury occurred in a fall at work. Finally, the ALJ specifically noted that the claimant's answers to questions on cross-examination were evasive and non-responsive, indicating that she did not find him to be entirely credible. In short, we conclude that the Commission's opinion displays a substantial basis for the denial of relief and should therefore be affirmed.

In light of our conclusion regarding appellant's first point of appeal, it is unnecessary to address his remaining point concerning temporary-total disability benefits and medical treatment.

Affirmed.

HART and GRIFFEN, JJ., agree.